STATE OF MICHIGAN

COURT OF APPEALS

MANUEL REY,

Plaintiff-Appellant,

v

OAKLAND COUNTY SHERIFF'S DEPARTMENT,

Defendant-Appellee.

UNPUBLISHED
April 20, 2006

No. 265123
Oakland Circuit Court
LC No. 2004-062025-CD

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this employment discrimination action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and it must view such evidence in a light most favorable to the nonmoving party when determining whether a genuine issue of material fact exists. *Id.* Summary disposition is appropriate if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Id.* at 455.

Plaintiff contends that he was subject to harassment constituting a hostile work environment. The elements of such a cause of action are (1) the plaintiff belonged to a protected group, (2) he was subject to conduct or communication on the basis of his protected classification or status, (3) the conduct or communication was unwelcome, (4) the unwelcome conduct or communication was intended to or did in fact substantially interfere with the plaintiff's employment or created an intimidating, hostile, or offensive work environment, and (5) respondeat superior. *Quinto v Cross & Peters Co*, 451 Mich 358, 368-369; 547 NW2d 314 (1996); *Rymal v Baergen*, 262 Mich App 274, 312; 686 NW2d 241 (2004).

Plaintiff cannot meet the second element because he admitted that no one in the department ever made disparaging comments directed at him on the basis of his national origin

or ethnic background. His claim appears to be predicated on the fact that he was offended when other deputies made disparaging comments about others, some of whom shared his ethnic background. Whether this is sufficient to meet the second element is an issue that has not been adequately addressed by plaintiff and is therefore abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Further, plaintiff cannot meet the fourth element, which requires a showing that a reasonable person would find that, in the totality of the circumstances, any unwelcome comments were sufficiently severe or pervasive to create a hostile work environment. *Quinto, supra* at 369. Plaintiff has not presented sufficient evidence regarding how often the comments were made, nor has he shown that the comments were made under circumstances in which a reasonable person would consider them as creating a hostile environment. The record reflects that the comments were made during training in which plaintiff's superiors were attempting to prepare officers for real life encounters through the use of role playing and confrontational scenarios that could include offensive language, and the training ended several months before plaintiff was discharged. Therefore, the trial court did not err in granting judgment for defendant on plaintiff's harassment claim.

Plaintiff also contends that he was fired in retaliation for opposing discrimination under the Michigan Civil Rights Act (CRA), MCL 37.2701(a). The elements of this a cause of action are (1) the plaintiff engaged in a protected activity, (2) the defendant knew that the plaintiff engaged in a protected activity, (3) the defendant took an employment action adverse to the plaintiff, and (4) a causal connection exists between the protected activity and the adverse employment action. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310-311; 660 NW2d 351 (2003). Protected activity includes opposing a violation of the CRA, making a charge under the CRA, filing a complaint under the CRA, or participating in an investigation, proceeding, or hearing under the CRA. MCL 37.2701(a); *Barrett v Kirtland Community College*, 245 Mich App 306, 318; 628 NW2d 63 (2001).

Plaintiff has not shown that the other deputies' comments constituted a violation of the CRA, such that he opposed a violation of the act, or that he filed a complaint under the act, i.e., with the state Department of Civil Rights or with the Equal Employment Opportunity Commission, *Hoffman v Sebro Plastics, Inc*, 108 F Supp 2d 757, 775 (ED Mich, 2000), or with the circuit court, MCL 37.2801. Even assuming that plaintiff's internal complaint was sufficient to give rise to a retaliatory discharge claim, he has not shown a causal connection between the filing of the complaint and his discharge.

The fact that an adverse employment action temporally follows the filing of a complaint under the CRA does not establish causation. "Something more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed." *West v Gen Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003). Further, "the plaintiff must show that his participation in activity protected by the CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causal link between the two." *Barrett, supra* at 315.

Plaintiff filed his complaint in October 2003. He was not discharged until January 2004. While plaintiff was capable of performing his job as indicated in the Daily Observation Reports, the stated reasons for plaintiff's discharge were his quick temper, negative attitude, and resistance to supervisory authority and direction, and these reasons were substantiated by the evidence documenting plaintiff's angry outbursts, insubordination, and disrespect for authority.

Plaintiff failed to show, as a matter of law, that the internal complaint filed three months earlier was a significant factor in the adverse employment decision. Therefore, the trial court did not err in granting defendant's motion for summary disposition.

In sum, we have carefully examined all of plaintiff's appellate arguments, and we conclude that reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray